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Random Acquisitions, LLC and Sherrie Cvetnich.
Case 07–CA–052473

September 16, 2013

**SECOND SUPPLEMENTAL DECISION
AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND HIROZAWA

The Acting General Counsel seeks default judgment in this case on the ground that the Respondent has failed to file an answer to the amended compliance specification. For the reasons stated below, we deny this motion.

On August 2, 2011, the Board issued a Decision and Order¹ that, among other things, ordered the Respondent to offer reinstatement to discriminatees Sherrie Cvetnich, Eric Cvetnich, and Teresa Burge and make them whole for any loss of earnings and other benefits resulting from their unlawful discharges in violation of Section 8(a)(1) of the Act. On March 16, 2012, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.² On January 28, 2013, the Board issued a Supplemental Decision and Order³ granting the Acting General Counsel's motion for partial summary judgment based upon the inadequacy of the Respondent's answer to the compliance specification. The Board determined that the backpay calculations contained in the compliance specification regarding gross backpay were true as a matter of law and remanded the proceeding to the Region to hold a hearing before an administrative law judge for the limited purpose of taking evidence regarding the amounts of interim earnings and net backpay involved in paragraphs 6 and 7 of the compliance specification, as well as the remaining paragraphs of the compliance specification as to which summary judgment was not granted.⁴

Thereafter, on April 30, 2013, the Regional Director issued an amended compliance specification and notice of hearing alleging the amount of backpay due under the Board's Supplemental Order, and notifying the Respondent that it should file an answer complying with the Board's Rules and Regulations. Although properly

served with a copy of the amended compliance specification,⁵ the Respondent failed to file an answer.

By letter dated May 30, 2013, the Region advised the Respondent that no answer to the amended compliance specification had been received and that unless an answer was filed by June 6, 2013, a motion for default judgment would be filed. To date, the Respondent has failed to file an answer.

On June 14, 2013, the Acting General Counsel filed with the Board a motion for default judgment, with exhibits attached.⁶ On June 17, 2013, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the amended compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Default Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the amended compliance specification. Although the Respondent failed to answer the amended compliance specification, the Board will not grant default judgment on an allegation denied in a timely-filed answer to a compliance specification, even though the respondent later fails to timely answer an amended specification repeating the allegation, provided that the repeated allegation is not substantively changed from the original. *Kolin Plumbing Corp.*, 337 NLRB 234, 235 (2001). Here, we find that the allegations in the amended compliance specification were not substantively changed from those in the original compliance specification. In these circumstances, the Respondent may be excused from filing an amended answer that would have been

¹ 357 NLRB No. 32.

² No. 11-2434.

³ 359 NLRB No. 55.

⁴ 359 NLRB No. 55, slip op. at 3.

⁵ On May 3, 2013, after discovering that the Respondent had changed its address, the Region reissued and served the amended compliance specification on the Respondent at its most recent address.

⁶ There is no indication in the motion why this case did not proceed to a hearing, as directed in the Board's earlier Decision and Order.

unchanged from its initial answer. We shall therefore deny the Acting General Counsel's motion for default judgment, and we shall remand the proceeding to the Region for further appropriate action.

ORDER

The National Labor Relations Board orders that this proceeding is remanded to the Regional Director for Region 7 for the purposes of issuing a notice of hearing and scheduling the hearing before an administrative law judge, for the limited purpose of taking evidence to determine the amounts of interim earnings and net backpay involved in paragraphs 6 and 7 and to the remaining paragraphs of the amended compliance specification as to which summary judgment was not granted in the Board's earlier supplemental decision.⁷

It is further ordered that the administrative law judge shall prepare and serve on the parties a supplemental

decision containing findings of fact, conclusions of law, and recommendations based on all of the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules shall be applicable.

Dated, Washington, D.C. September 16, 2013

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Kent Y. Hirozawa, Member

⁷ If the Respondent fails to participate in the hearing, nothing herein will prevent the judge from granting a motion for summary judgment at that time.

(SEAL) NATIONAL LABOR RELATIONS BOARD